

## Environmental Protection Agency

## § 262.85

(e) Within three working days of the receipt of imports subject to this Subpart, the owner or operator of the U.S. recovery facility must send signed copies of the tracking document to the notifier, to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and to the competent authorities of the exporting and transit countries.

[61 FR 16310, Apr. 12, 1996, as amended at 71 FR 40271, July 14, 2006]

### § 262.85 Contracts.

(a) Transfrontier movements of hazardous wastes subject to amber or red control procedures are prohibited unless they occur under the terms of a valid written contract, chain of contracts, or equivalent arrangements (when the movement occurs between parties controlled by the same corporate or legal entity). Such contracts or equivalent arrangements must be executed by the notifier and the owner or operator of the recovery facility, and must specify responsibilities for each. Contracts or equivalent arrangements are valid for the purposes of this section only if persons assuming obligations under the contracts or equivalent arrangements have appropriate legal status to conduct the operations specified in the contract or equivalent arrangement.

(b) Contracts or equivalent arrangements must specify the name and EPA ID number, where available, of:

(1) The generator of each type of waste;

(2) Each person who will have physical custody of the wastes;

(3) Each person who will have legal control of the wastes; and

(4) The recovery facility.

(c) Contracts or equivalent arrangements must specify which party to the contract will assume responsibility for alternate management of the wastes if its disposition cannot be carried out as described in the notification of intent to export. In such cases, contracts must specify that:

(1) The person having actual possession or physical control over the

wastes will immediately inform the notifier and the competent authorities of the exporting and importing countries and, if the wastes are located in a country of transit, the competent authorities of that country; and

(2) The person specified in the contract will assume responsibility for the adequate management of the wastes in compliance with applicable laws and regulations including, if necessary, arranging their return to the original country of export.

(d) Contracts must specify that the consignee will provide the notification required in § 262.82(c) prior to re-export of controlled wastes to a third country.

(e) Contracts or equivalent arrangements must include provisions for financial guarantees, if required by the competent authorities of any concerned country, in accordance with applicable national or international law requirements.

NOTE TO PARAGRAPH (e): Financial guarantees so required are intended to provide for alternate recycling, disposal or other means of sound management of the wastes in cases where arrangements for the shipment and the recovery operations cannot be carried out as foreseen. The U.S. does not require such financial guarantees at this time; however, some OECD countries do. It is the responsibility of the notifier to ascertain and comply with such requirements; in some cases, transporters or consignees may refuse to enter into the necessary contracts absent specific references or certifications to financial guarantees.

(f) Contracts or equivalent arrangements must contain provisions requiring each contracting party to comply with all applicable requirements of this subpart.

(g) Upon request by EPA, U.S. notifiers, consignees, or recovery facilities must submit to EPA copies of contracts, chain of contracts, or equivalent arrangements (when the movement occurs between parties controlled by the same corporate or legal entity). Information contained in the contracts or equivalent arrangements for which a claim of confidentiality is asserted accordance with 40 CFR 2.203(b) will be treated as confidential and will be disclosed by EPA only as provided in 40 CFR 260.2.

NOTE TO PARAGRAPH (g): Although the U.S. does not require routine submission of contracts at this time, OECD Council Decision C(92)39/FINAL allows members to impose such requirements. When other OECD countries require submission of partial or complete copies of the contract as a condition to granting consent to proposed movements, EPA will request the required information; absent submission of such information, some OECD countries may deny consent for the proposed movement.

**§ 262.86 Provisions relating to recognized traders.**

(a) A recognized trader who takes physical custody of a waste and conducts recovery operations (including storage prior to recovery) is acting as the owner or operator of a recovery facility and must be so authorized in accordance with all applicable Federal laws.

(b) A recognized trader acting as a notifier or consignee for transfrontier shipments of waste must comply with all the requirements of this Subpart associated with being a notifier or consignee.

**§ 262.87 Reporting and recordkeeping.**

(a) *Annual reports.* For all waste movements subject to this Subpart, persons (e.g., notifiers, recognized traders) who meet the definition of primary exporter in § 262.51 shall file an annual report with the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460, no later than March 1 of each year summarizing the types, quantities, frequency, and ultimate destination of all such hazardous waste exported during the previous calendar year. (If the primary exporter is required to file an annual report for waste exports that are not covered under this Subpart, he may include all export information in one report provided the following information on exports of waste destined for recovery within the designated OECD member countries is contained in a separate section). Such reports shall include the following:

(1) The EPA identification number, name, and mailing and site address of the notifier filing the report;

(2) The calendar year covered by the report;

(3) The name and site address of each final recovery facility;

(4) By final recovery facility, for each hazardous waste exported, a description of the hazardous waste, the EPA hazardous waste number (from 40 CFR part 261, subpart C or D), designation of waste type(s) from OECD waste list and applicable waste code from the OECD lists, DOT hazard class, the name and U.S. EPA identification number (where applicable) for each transporter used, the total amount of hazardous waste shipped pursuant to this Subpart, and number of shipments pursuant to each notification;

(5) In even numbered years, for each hazardous waste exported, except for hazardous waste produced by exporters of greater than 100 kg but less than 1000 kg in a calendar month, and except for hazardous waste for which information was already provided pursuant to § 262.41:

(i) A description of the efforts undertaken during the year to reduce the volume and toxicity of waste generated; and

(ii) A description of the changes in volume and toxicity of the waste actually achieved during the year in comparison to previous years to the extent such information is available for years prior to 1984; and

(6) A certification signed by the person acting as primary exporter that states:

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment.

(b) *Exception reports.* Any person who meets the definition of primary exporter in § 262.51 must file an exception report in lieu of the requirements of